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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/646,986	09/26/2000	Henning Vollert	02481.1699	3891

22852 7590 01/28/2003

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EXAMINER

HANDY, DWAYNE K

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 01/28/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/646,986

Applicant(s)
Vollert

Examiner
Dwayne K. Handy

Art Unit
1743



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Dec 19, 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5-13 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 20) ☐ Other:

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DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

2. Claims 5-1~~3~~ are rejected under 35 U.S.C. 102(e) as being anticipated by Pham et al. (6,171,780). This rejection remains in effect. **See Response to Arguments below.**

Response to Arguments

3. Applicant's arguments filed 12/18/02 have been fully considered but they are not persuasive. In traversing the rejection made by the Examiner regarding Pham, applicant has assumed that the Examiner is making an inherency argument. This assumption is correct. The Examiner also thanks applicant for reminding him of his duties to show inherency from given facts if a limitation from an instant claim is not explicitly recited in a reference.

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As far as the cited limitation of “the distance between the center of the outer vessels and an edge of the glass base ranges from 4 to 11 mm”, the Examiner believes this feature is indeed inherent to the cited reference “Pham”. There are several elements or dimensions which must be defined to determine the distance between the center of an outer vessel and the edge of the base. These include: the overall “footprint” or edge dimensions of the base, the number of vessels (wells) present in the base, and the distance between the centers of the vessels (center-to-center spacing). All of these elements or dimensions are defined in the reference Pham. In column 10 and Table 1, Pham describes the footprint of the base. The footprint “can have a shape that is substantially similar to the footprint of existing multiwell platforms, such as the standard 96-well microtiter plate, whose footprint is approximately 85.5 mm in width by 127.75 mm in length or other sizes that represent a current or future standard”. In Table 1, Pham lists multiple footprint sizes in Table 1 which also appear to use a standard size of approximately 85.5 mm by 127.75 mm. The Examiner, then, takes these teachings from Pham to indicate a multiwell platform with an approximate 85.5 mm by 127.75 mm base.

The remaining two dimensions are disclosed in Pham through ranges in columns 11 and 12. In column 11, lines 44-59, Pham discloses the range for the number of wells present in the base. The range includes from 50-10,000 wells. Pham also states that a common number of wells can be 1536, 3456, and 9600 and that the number of wells can be a multiple of 96 within these ranges, preferably the square of an integer multiplied by 96. Finally in column 12, lines 53-63, Pham teaches well center-to-well center spacing to be in the range of 0.5-100 mm.

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The standard rectangular shape is shown in Figure 4 in fact. Given the ranges for the number of wells possible and the possible spacing between these wells, the Examiner believes it is clear that Pham discloses combinations of well numbers and well spacing values on a base with 85.5 mm by 127.75 mm. In the original action (paper 8), the Examiner cited a specific combination of a 96 X 16 well plate (1536 wells) with 0.5 mm center well-to-center well spacing. This would create a well perimeter of approximately 95 mm by 15 mm. Placing this "well print" within the standard base "footprint" of 85.5 mm by 127.75 mm would yield an outer vessel that is 4-11 mm from the edge of the glass. Of course, there are additional combinations of well number and well spacing which would also meet the limitation in question as well. The Examiner also notes that applicant has not specified a particular edge of the glass base that is to be used to provide the limitation of 4-11 mm. Nor has applicant specified any specific outer vessel to be used to measure from in making the determination of whether or not the vessel is 4-11 mm from the edge. Therefore, any outer vessel within 4-11 mm of any edge of the base would meet this limitation. From the Examiner's cited combination of Pham's disclosure and the breadth of applicant's instant claims, the Examiner believes the reference Pham does indeed anticipate the claims as currently written. Also, applicant has argued that Pham does not include the teaching of a lid element. The Examiner disagrees and directs applicant to Figures 3 and 4, as well as column 16, lines 13-34 which clearly recites a lid element.

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Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Knebel (6,503,456) and Cook (5,989,854) cite multiwell plates with standard footprint dimensions of approximately 85 mm x 128 mm. Sandell et al. (6,419,827) teaches a filtration apparatus which includes a sample well tray of standard dimensions. Giebeler et al. (6,316,774) and Chavez et al. (5,380,493) teaches devices used in conjunction with multiwell plates.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dwayne K. Handy whose telephone number is (703)-305-0211. The examiner can normally be reached on Monday-Friday from 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden, can be reached on (703)-308-4037. The fax phone number for the organization where this application or proceeding is assigned is (703)-772-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-0661.


Jill Warden
Supervisory Patent Examiner
Technology Center 1700

dkh

January 23, 2003